

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 78 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

G R EMPLOYEES WELFARE TRUST

Appearance:

MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 04/05/99

ORAL JUDGEMENT

#. At the instance of Commissioner of Income Tax, statement of case has been submitted by the Income Tax Appellate Tribunal, Ahmedabad Bench B. The following question of law arising out of Tribunal's order in Wealth Tax Appeals Nos. 85 to 87/Ahd/83 for the assessment

years 1977-78 to 79-80 has been referred for the opinion of this court by the Income Tax Appellate Tribunal:

"Whether the provisions of Section 21(4) of the Wealth Tax Act, 1957, cannot be applied in the case of the assessee trust and whether its wealth has to be taxed at the appropriate rate and not at the rate it was charged by the Wealth tax Officer?"

#. The assessee is a trust brought into existence by a deed of settlement dt. 30th March 1972. The trust was created for giving financial help to the employees who were defined and the members of their families for purpose of education, medical relief, providing gainful employment housing expenses on marriage and other social obligation etc. The trustees had uncontrolled discretion to give moneys for those purposes.

#. The Wealth Tax Officer assessed the trust as association of persons, accepted the net wealth returned by the trust which was otherwise duly within taxable limit but charged tax at 1.5% applying subsection (4) of Section 21. On appeal before the Appellate Assistant Commissioner the Wealth Tax Officer was directed to apply the appropriate rate under the schedule, by following the decision of the Income Tax Appellate Tribunal Ahmedabad Bench A dated 10.12.81 rendered in Income Tax Appeals No. 1617, 1618 and 1620/Ahd/98 in the matters arising under the Income Tax Act for the assessment year 1974-75 to 1977-78 wherein it was held that though the Trust was governed by Section 164(1) the rate applicable to such trust under Section 164 of the Income Tax Act was not applicable. On the same principle, Section 21(4) of the Wealth Tax Act was also held to be not applicable. On further appeal, the Tribunal too following the aforesaid decision under the Income Tax Act affirmed the decision of the Appellate Assistant Commissioner.

#. While considering the question under Income Tax Act it was accepted that the trustees was a discretionary trust and individual shares of the person in whose behalf or for whose benefit income or any part thereof is receivable by the trust were indeterminate and it fell within Section 164(1) which inter alia provide that on the receipt of income of any such trust is to be charged as association of persons or at the rate of 65% on the income whichever course would be more beneficial to the revenue. Section 164(1) under its proviso enumerated exceptions in which the main provision would not be applicable. and the tax was to be charged as if the

whole or part or total income is of the association of persons. In such cases maximum marginal rate of 65% could not be levied. The decision under the Income Tax Act rested on the conclusion that clause (i) of proviso which applied to cases where none of the persons had other income chargeable to tax under this Act (Income Tax Act 1961) and therefore the provision levying maximum marginal rate at 65% on the income governed by subsection (1) of Section 164 was not applicable.

#. Applying the decision which we are told subsequently affirmed by this court on a reference being made to it, the assessment under Wealth Tax Act which was made in the status of AOP by applying Section 21(4) and tax was computed at 1.5% on the total value of asset as disclosed by the assessee, was made to conform with levy of tax at the rate prescribed in the schedule and not at the specified rate under Section 21(4) is substantially the same, so far as substantive provision is concerned. However, there is marked difference in so far as exception provided under the proviso. Section 21(4) relevant for the present purpose read as under at the relevant time.

"21(4) Notwithstanding anything contained in the foregoing provisions of this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager, or other person aforesaid as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act, and

(a) at the rates specified in Part I of Schedule I; or

(b) at the rate of three per cent

whichever course would be more beneficial to the revenue:

provided

(i) xxxxxxxxxxxx

(ia) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

Explanation 1: For the purpose of this subsection, the shares of the persons on whose

behalf or for whose benefit any such assets are held shall be deemed to be indeterminate or unknown unless the shares of the persons on whose behalf or for whose benefit such assets are held on the relevant valuation date are expressly stated in the order of the court or instrument of trust or deed of Wakf, as the case may be, and are ascertainable as such on the date of such order instrument or deed."

#. We find that no corresponding provision exist under the Wealth Tax Act under proviso to Subsection (4) of Section 21 which corresponds to clause (i) of proviso to Section 164(1) of the Income Tax Act. In the Income Tax Act, in case where none of the beneficiaries has any other income chargeable under the Income Tax Act the rigour of the substantial provision of charging tax at the rate of 65% was mitigated, by permitting the assessment of income of the trust governed under Section 164(1) by treating the same to be income of association of persons.

#. This makes material difference as to the applicability of the provision of subsection (4) under the wealth Tax Act, in comparison to the application of Section 164 under the Income Tax Act in the facts and circumstances of the present case. The Tribunal in our opinion apparently erred in not noticing this apparent difference in the provisions under the two Acts which were not para materia. Assuming them to be so, it had applied the ratio of the decision rendered under the Income Tax Act to the proceedings under the Wealth Tax Act.

#. We are therefore of the opinion that the Tribunal was not justified in not applying the special rate of Wealth Tax under section 21(4) as charged by the Wealth Tax Officer merely on the ground that the question has been determined under Income Tax Act relating to application of rate under Section 164(1) to be applied to the income received by the trustees of the trust governed by Section 164(1) was not applicable, without considering the fact that exclusion from applicability of the rate provided under Section 164(1), at which income tax was to be calculated, was made because the case fell within clause (i) to the proviso of Section 164(1) whereas no corresponding provision exist under the Wealth Tax Act during the assessment year in question.

#. Faced with this situation learned counsel for the assessee urged that the tax would still not be leviable

because under the Wealth Tax Act, AOP is not assessable entity but assessable entities are only individual, HUF, or the company and subsection (4) of Section 21 which operates notwithstanding other provisions of Section 21 does not preclude the applicability of other provisions of the Act including the exemption limit provided under the schedule on which no tax is leviable. We are afraid both the questions do not arise out of the Tribunal's order which could be examined by us. It is for the Tribunal when it decides the appeal again in the light of the decision rendered by this court in this reference to consider and decide these issues.

Accordingly, reference is disposed off.

There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)